

Aug 21, 2006 4:29PM Prot. Equinox 514-733-4424

Nº5474 P. 10

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IN THE DRAWINGS:

Please replace pending Figure 5 with Figure 5 provided on the accompanying replacement sheet.

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REMARKS / ARGUMENTS

Amendments to the Specification

In the specification, the paragraph commencing on page 3 with the text "In accordance with a first embodiment of the present invention ..." has been modified to reflect amendments to claim 1. The paragraph beginning with "Due to a high rate of instantaneous demand ..." commencing on page 8, has been amended on the last sentence thereof (page 9, lines 15-17), for consistency with the preceding sentence. No new matter has been added by these amendments.

Amendments to the drawings

In the drawings, and in response to the Examiner's objection under 37 CFR 1.83(a), Figure 5 has been replaced with Figure 5 shown on the attached replacement sheet. Amended Figure 5 shows the chute 84, which acts as a raisable guide, in a raised position indicated by the depiction of the chute 84 in solid lines (the default position) and in a lowered position indicated by the dotted lines. The arrows indicate movement of the chute. Support for this amendment is found in the paragraph beginning with "Due to a high rate of instantaneous demand ..." commencing on page 8, which describes chute 84 as both movable and raisable, and operating as a raisable guide which is lowered just in time (default being the raised position) to allow the box to merge onto the mixing conveyor. Accordingly, no new matter is added by this amendment. The Applicant notes that the Examiner has referred to the second case guides as being raised and lowered for the objection to the drawings. Such a feature is claimed nowhere in the Application and is not mentioned in the specification. However, the claims, notably claim 1, do refer to raisable guides, described as movable chutes 84 in the specification. Accordingly, the Applicant presumes that the Examiner is referring to chute 84 in the objection.

Amendments to the claims

Claims 4 and 5 have been cancelled. The claims, notably claim 1, have been amended to include two depalletizing stations, each one feeding cases of

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different respective products depalletized on the depalletizing stations to the first guides extending therefrom, the cases of the different products being combined on the second guides. The remaining amended claims have undergone minor modifications to ensure proper antecedent basis with amended claim 1 and to correct minor typographical errors.

Re Objection to claim 20 under 37 CFR 1.75 (c): Claim 20 has been amended by removing the dependency on claim 5, and is now dependent only on claim 19. Accordingly, there is no longer a multiple dependency issue.

Re Objection to Informality in claim 2: Claim 2 has been amended to remove the reference to "same product", which has been replaced by "respective product unit", introduced in claim 1, to ensure proper antecedent basis.

Claim rejections under 35 USC 103 (a)

The Examiner has rejected claims 1-3, 6 and 7 as being unpatentable over Nelsen (Pn 1,800,898), in view of Wolfram (Pn 4,411,350) and Howell et al. (Pn 5,361,889). Further, the Examiner has rejected claims 4, 5, and 25 as being unpatentable over Nelsen (Pn 1,800,898), in view of Wolfram (Pn 4,411,350) and Howell et al. (Pn 5,361,889), further in view of Spaude et al. (Pn 4,021,992). In response, the Applicant has modified claim 1 to include at least two depalletizing stations, each one feeding cases of different respective products depalletized on the depalletizing stations to the first guides extending therefrom, the cases of the different products being merged on the second guides.

Re claim 1: In fact, independent claim 1 of the present invention refers to an order merging system comprising at least two depalletizing stations, each one feeding cases of different respective products depalletized on the depalletizing stations to at least one pair of first guides and at least one pair of raisable guides extending therefrom, the cases of the different products being combined on the at least one pair of second guides (Independent from one another), such

that each one of the second guides has a specific combination or mix of the respective product cases merged from the at least two depalletizing stations. Nelsen discloses a conveying apparatus with receiving (depalletizing) stations (2,3,4), each feeding a first guide (5,6,7) turning into a second guide downstream of a curved section, such that each second guide having only the product cases of its respective depalletizing station. All second guides reach a common merging section (13) that feeds the only one main line conveyor (8) with the merged products. In order to get at least one pair of second guides (mixing conveyors) as in the present invention, Nelsen would need two sets of apparatus of Fig. 1, thus twice the floor space, and so on for more, as opposed to the present invention in which only additional first guide(s), raisable guide(s) and second guide(s) simply need to be added along the existing pairs to get additional mixed lane(s) of merged products (*see page 8, lines 9-13 and 20-23 of the original disclosure*). Wolfram teaches a reversing conveyer track that changes the orientation (change in supported product face), direction and spacing of books (2) (product cases) and does not show how a similar conveyer could be easily made that would keep the same bottom face of the product case supported at all time therealong and with a serious downward slope such that it is twisted, since Wolfram's conveyer could not be simply added to Nelsen's apparatus to partially get the present invention. Howell et al. disclose an apparatus for merging multiple lanes of product with a permanently lowered chute that is automatically (without control) and momentarily raised by a product case passing thereunder (along a lower conveyor lane) and pushing thereon, and momentarily blocking passage of a next upper product case (along an upper conveyor lane) to prevent the latter from falling onto the first case passing under, as opposed to the controlled raisable guides of the present invention used to be lowered at exactly the right moment in order to allow the product to get onto the mixing conveyor in respecting a predetermined sequence on the mixing conveyor. (Emphasis added)

Therefore, it is respectfully believed that it would not have been obvious at all to one having ordinary skill in the art at the time Applicant's invention was made to combine the apparatuses from any of the cited references (especially Nelsen, Wolfram & Howell et al.) to get the present invention of amended claim 1 in

which each product depalletizing station serves more than one first case guide in a layout that advantageously uses sloping and twisted gravity curve lanes to allow access to more than one independent mixing belt, since there is no suggestion in any of the references for such combinations. This suggestion of combination however constitutes a prerequisite for a combination rejection as stated by the Patent Office Board of Appeal in its decision ex parte Walker 135 USPQ 195:

"In order to justify combination of references it is necessary not only that it be physically possible to combine them, but that the art should contain something to suggest the desirability of doing so."

The Court of Customs and Patent Appeal subscribes to the Board's reasoning when it handed down its decision in the case in re Inperato, 179 USPQ, 730 holding:

"The fact that the disclosures of references can be combined does not make combination obvious unless the art also contains something to suggest the desirability of such combination."

Accordingly, it is respectfully believed that it would not have been obvious to one having ordinary skill in the art at the time the invention was made to modify Nelsen's lanes to be downwardly sloped as taught by Wolfram and to add raisable guides as taught by Howell et al., in order to provide for an order merging system as claimed in amended claim 1. Similarly, combinations with any other cited prior art document would also fail from teaching the present order merging system, as not being suggested thereby. (Emphasis added)

Re claims 2, 3, 6, 7, and 25: Amended dependent claims 2, 3, 6, 7, and 25 are respectfully believed to patentably distinguish the invention over the prior art cited by the Examiner for the similar reasons set out above with respect to claim 1 since they depend thereon (claims 4 and 5 have now been cancelled).

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Allowable subject matter

The Examiner states that claims 8-19 and 21-24 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form including all limitations of the base claim and intervening claims. Claims 8-19 and 21-24 are all dependent on amended claim 1 and have all the features and limitations thereof. Accordingly, the Applicant respectfully submits that these claims are now allowable for the same reasons set out above for amended claim 1.

In light of the foregoing, the Applicant submits that the Application is now ready for allowance and favorable consideration of the present application to this effect is respectfully requested.

Respectfully submitted,

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Franz BONSANG, Reg.No: 56638

Encl.: Petition for Extension of Time (1 month) with fee payment form (2 pages);
Replacement sheet of page 1 of the Drawings for amended Figure 2.

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